

Hon. Ann A. Scott Timmer, Chair
Attorney Regulation Advisory Committee
Arizona Supreme Court
1501 W. Washington St.
Phoenix, AZ 85007

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	
)	Supreme Court No. R-19-0004
)	
PETITION TO AMEND RULE)	Comment of the Attorney Regulation
34(b)(1)(D) OF THE RULES OF THE)	Advisory Committee in Support of
ARIZONA SUPREME COURT)	Proposed Rule Change with
)	Modifications
)	
)	

Pursuant to Rule 28(e), Rules of the Arizona Supreme Court, Justice Ann A. Scott Timmer, Chair of the Attorney Regulation Advisory Committee, respectfully urges this Court to adopt the proposed amendment to Rules 34(b)(1)(D), Rules of the Arizona Supreme Court, and consider expanding the scope of the proposed amendment.

Pursuant to Administrative Order No. 2011-44, the Attorney Regulation Advisory Committee (ARC) was created to assist the Supreme Court and the Chief Justice on issues related to attorney regulation, including proposing or supporting recommendations for any changes needed “to reinforce lawyer competency and professionalism and strengthen the Supreme Court’s oversight of the regulation and practice of law in this state.”

The Current Petition and Proposed Amendment

Current Rule 38(f) allows an attorney licensed by and having practiced in another jurisdiction to provide civil legal aid services in Arizona under the auspices of an approved legal service organization. As long as that lawyer's practice is limited to providing indigent legal services, he or she does not need to first pass Arizona's uniform bar examination and/or otherwise obtain an Arizona license.

The pending petition asks: What if that lawyer, after a period of years practicing in Arizona, wants to sit for the Arizona bar examination and obtain an Arizona license?

Current Rule 34(b)(1)(D) might preclude that lawyer from taking the exam. Why? Because current Rule 34(b)(1)(D) requires an applicant have either (1) a juris doctor degree issued by a school fully or provisionally accredited by the American Bar Association; or (2) a juris doctor degree and, in addition, have been engaged in the practice of law for at least three out of the last five years in a state other than Arizona. Under the current rule, a Rule 38(f) attorney cannot count his/her legal experience in Arizona toward the practice requirement in Rule 34(b)(1)(D).

Whether an applicant graduates from an accredited law school may well be a legitimate concern as to qualification to sit for a bar examination, particularly if the applicant is a new graduate. This Court has already determined that any concern about the origin of the juris doctor degree lessens – as reflected in current Rule

34(b)(1)(D) -- once the applicant has not only taken and passed a bar examination in a sister state but has also successfully practiced law in that jurisdiction for at least three out of the last five years before applying to sit for the Arizona exam.

The petition before the Court proposes only that a similarly situated attorney, possessing a juris doctor degree and being licensed in another state, be allowed to count his or her Rule 38(f) civil legal aid service years in Arizona toward the three-out-of-the-last five years' requirement in Rule 34(b)(1)(D).

The Attorney Regulation Advisory Committee supports this rule change. The Committee sees no reason to value an applicant's legal experience providing civil legal aid services to the indigent population in Arizona differently than the legal experience that same attorney may have obtained providing legal services to a non-profit organization, for a government office or in the private sector in another state. As importantly, there are traditional safeguards that remain in place to protect the public. First, the applicant must complete a detailed application and submit an extensive character and fitness report. That report, along with information available from the other state's licensing body, will disclose and prompt further investigation into any prior discipline or practice competency issues. Second, the applicant must successfully pass the Arizona Bar Examination, and complete the Arizona-specific practice course.

An Alternative Proposal

There are a number of other lawyers not licensed in Arizona but who are authorized and actively practicing law in Arizona under a variety of exceptions existing under current Rule 38.¹ Like the provision in Rule 38(f) discussed above, the connecting thread among these exceptions is that the applicant has graduated with a juris doctor degree, and has been admitted in another state, territory or the District of Columbia. The Court could consider adopting language already utilized in Rule 34(f)(1)(C), the “Admission on Motion” rule, to allow any non-Arizona licensed lawyer authorized to practice in this state to apply to take the Arizona bar examination. The proposed language for Rule 34(b)(1)(D) could read:

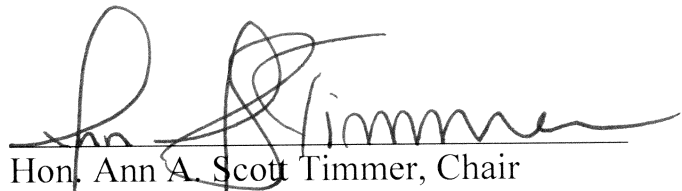
D. the applicant is a graduate with a juris doctor from a law school provisionally or fully approved by the American Bar Association at the time of graduation or the applicant is a graduate with a juris doctor and has been actively engaged in the authorized practice of law in ~~some other state or states~~ one or more states, territories, or the District of Columbia for at least three of the last five years prior to filing an application for admission to practice in Arizona; and ...

All of the safeguards to vet potential problems identified concerning Rule 38(f)-qualified applicants above would apply equally to other non-Arizona licensed Rule 38-authorized practitioners, and would insure adequate protection for the public.

¹ A pending rule change petition, R-19-0011 proposes reorganizing the exceptions authorized under Rule 38 and 39.

Based on the forgoing, the Committee respectfully urges the Arizona Supreme Court to favorably consider the pending petition and either adopt the change to Rule 34(b)(1)(D) proposed by the petitioner or, in the alternative, adopt the language proposed by ARC to allow other non-Arizona licensed lawyers authorized to practice under the provisions of Rule 38 to apply to take the Arizona bar examination.

RESPECTFULLY SUBMITTED this 20th day of April, 2019.



Hon. Ann A. Scott Timmer, Chair
Attorney Regulation Advisory Committee